

6.0 THIRD-PARTY AGREEMENTS

The Contractor shall be responsible for obtaining all third-party approvals required to complete the Work, except as otherwise specified in the Contract Documents. Third-party coordination and approvals will be required from, but not limited to, the following agencies: The City and County of Denver Public Works Department, the City and County of Denver Parks Department, the BNSF Railroad. Utility Company requirements are addressed in the Book 2, Section 7, Utility Relocations. Coordination and approval requirements of Railroad Companies and Local Agencies are addressed in this Section.

Third-Party Agreements for this project include:

An Inter-Governmental Agreement (IGA) between the Colorado Department of Transportation and the City and County of Denver, Public Works for improvements to be completed as part of this Project. A Draft of this agreement is included in the Reference Documents.

An Inter-Governmental Agreement (IGA) between the Colorado Department of Transportation and the City and County of Denver, Parks Department for improvements to be completed as part of this Project. A Draft of this agreement is included in the Reference Documents.

A Construction and Maintenance Agreement (C&M Agreement) between the Colorado Department of Transportation and the Railroad for improvements to be completed as part of this Project. A Draft of this agreement is included in the Reference Documents.

A Public Utility Commission Application (PUC Application) between the Colorado Department of Transportation and the Public Utility Commission for improvements to be completed as part of this Project this Project. A Draft of this application is included in the Reference Documents.

6.1 Local Agency

Local Agency requirements pertaining to the Project are detailed in Book 2, Book 3 and Reference Documents as appropriate.

6.2 Railroad

The Project includes Work on, over and adjacent to the BNSF Railway Company (Railroad) Right-of-Way (ROW) and/or properties on, over or adjacent to the tracks, wire lines, and other facilities of the Railroad. This Section provides requirements applicable to Work performed on, over or adjacent to the Railroad ROW. Anticipated Work on, over or adjacent to Railroad ROW is limited to construction work necessary for the removal and replacement of the existing US6 bridge structure foundations, piers, crash walls and abutment retaining walls, lighting under the bridge, and all other substructure and superstructure elements. The Contractor shall abide by and comply with the requirements of the Railroad, as well as those requirements specified herein and as identified and referenced in the PUC application and BNSF C&M Agreement.

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The Contractor shall comply with all rules and regulations prescribed by the Railroad as to the proper manner of protecting the tracks (and the traffic moving thereon), telephone, telegraph and signal wires, and other property of the Railroad or their tenants at and in the vicinity of the Project during the time such Work is being performed. Compliance with the Railroad rules and regulations shall include execution of agreements required by the Railroad.

6.2.1 Applicable Standards

The design and construction of the Railroad Work for the Project shall be in accordance with the Railroad's written specifications, standards of practice (which may include design format), and construction methods that are current at the Proposal Due Date. The Contractor shall obtain all such written specifications, standards of practice, and construction methods from the Railroad. In the event of a conflict between the requirements of the Railroad and the requirements of the Contract Documents, CDOT, at its sole discretion, will determine which shall govern. The Contractor shall be responsible for resolution of any unresolved ambiguity prior to proceeding with any Railroad Work.

The Contractor shall meet the requirements included in the executed Construction and Maintenance Agreement ("C&M Agreement") between CDOT and the Railroad created for this Work and provided with the Reference Documents. Previous executed C&M agreements and the Draft C&M Agreement for this project are included in the Reference Documents for referral.

The Contractor shall meet the requirements included in the Railroad agreements or permits entered into by the Contractor for Work to be performed by the Contractor within Railroad ROW.

6.2.2 Administrative Requirements

Within 5 Days after NTP1, the Contractor shall notify the Railroad Manager of Public Projects:

Mr. Andy Amparan
Manager Public Projects
BNSF Railway Company
4515 Kansas Avenue
Kansas City, KS 66106
Phone: (913) 551-4964
FAX: (913) 551-4077

And, Railroad General Road Manager:

Mr. Mark Carpenter
General Road Manager
BNSF Railway Company
3700 Globeville Road
Denver, CO 80216
Phone: (303) 480-6393
FAX: (303) 480-7463

The Contractor shall meet with the Railroad and CDOT as soon as practicable after NTP1 to review all Railroad points of concern and other items that may affect the Schedule. The

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Contractor shall identify critical Activities and sequences as they affect Railroad operations, and shall plan to effectively mitigate Railroad impacts.

The US6 bridge removal and replacement at the BNSF location will require CDOT to negotiate and execute a Construction and Maintenance contract with the Railroad prior to construction. The Contractor shall support CDOT in this effort by preparing any Contract exhibits and/or information requested by CDOT or the Railroad. The Contractor shall allow for appropriate duration in the Project Schedule for contract negotiation and execution, and shall provide the supporting documentation in a timely fashion to CDOT so as not to impact the Project Schedule.

All Railroad facilities requiring modifications shall be designed and constructed by the Railroad.

Before commencing any Work on Railroad properties, the Contractor shall enter into agreement with the Railroad in the form of Exhibit C and Exhibit C-1 included as Exhibits to Book 2, Section 6 – Third Party Agreements, or latest versions thereof provided by the Railroad. All costs associated with applying for and complying with Railroad permits or agreements, including required insurance coverage, clerical, administrative, and handling expenses in connection with the processing of these agreements, shall be included in the Work.

6.2.2.1 Railroad Insurance

The Contractor shall comply with the provisions for Railroad insurance as specified in the executed agreement with the Railroad and in the terms and conditions of the Contract.

6.2.2.2 Flagging and Inspection

Any Work within, or Work Equipment that could potentially fall within, 25 feet of the centerline of the nearest track rail shall require a Railroad flagger. The Contractor shall notify the Railroad per the executed agreement with the Railroad to arrange for required flagging services. The Railroad flagger shall provide services for the Railroad only. The Contractor shall provide a 30 day advance notice to the Railroad for the need of Railroad flagger services. Once the Contractor requests a flagger for Work on Railroad ROW, the flagger shall remain for the entire duration of the Work on Railroad ROW. The Contractor shall be responsible to appropriately notify the Railroad regarding flagging start and end dates for work on the Railroad ROW. The Contractor shall provide a 15 day advance notice to the Railroad when all work on the Railroad ROW is scheduled for completion to provide for termination of Railroad flagger services.

During the period of construction, all flagging and protective services shall be performed strictly in accordance with directives and instructions issued by the Railroad. The Contractor shall confer with the Railroad for the times, locations, and manner of such protective measures. The Contractor shall include the Railroad flaggers in all its regularly scheduled safety meetings. If the Contractor does not comply with the above requirements, the Railroad will post a flagger or flaggers, as it deems necessary, for the duration of the Project. The Contractor shall not be entitled to any additional compensation if this occurs.

The Railroad's estimated flagging costs are set forth in **Exhibit C** to Book 2, Section 6 – Third Party Agreements. The Contractor shall estimate the number of Railroad flagging days as set forth in **Exhibit C** necessary for the required demolition of the Existing Structure and the construction of the New Structure.

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The Railroad utilizes independent consultant services to inspect and verify that any and all work on Railroad ROW is being undertaken in accordance with Railroad safety requirements. Failure to comply with RR safety requirements may result in a stop work order.

6.2.2.3 Cost for Flagging, Inspection, Design Plan Reviews

The Contractor shall be responsible for and include in its GMP the amount that will be required for Railroad flagging and inspection, Railroad maintenance of temporary crossings, Railroad agreement, permit and coordination fees, Railroad design plan review costs, and other Railroad-related costs. The Contractor shall keep a log of actual time that the Railroad personnel are flagging. Copies of the log shall be submitted to CDOT. The Railroad will bill the Contractor for Railroad flagging and inspection, and other Railroad costs incurred on the Project. The estimated cost for one (1) flagger is ranges between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. Work days longer than 8-hour days, and double shifts will require the utilization of additional Railroad flaggers.

The rates of pay of the Railroad employees customarily called upon to act for the protection of the Railroad are the Railroad rates in effect at the time of the Work for the various classes of labor. Compensation, property damage and public liability insurance, vacation and holiday time, Railroad retirement and unemployment taxes, health and welfare, and supervision charges shall be added to the above rates. The Railroad will, upon request, furnish prospective bidders with an estimate of cost of the flagging protection that will be required; but such estimate shall be understood to be approximate only, and no guarantee is made that the total cost of such flagging will not be in excess of the estimated amount.

6.2.2.4 Authority of Railroad Flaggers and Inspectors

The Railroad flaggers and inspectors shall have the right to direct the Contractor to stop Work on, over or adjacent to Railroad property, if the Railroad in its sole discretion determines that the Work being performed is hazardous to Railroad property and/or operations. The Railroad will give immediate notice to CDOT of any Work stoppage. The Contractor, working with CDOT, shall be responsible for resolving to the Railroad's satisfaction the problems resulting in the Work stoppage. The Contractor shall accommodate any and all requests made by the Railroad that serve the purpose of avoiding hazards to Railroad property and/or operations. Neither the Railroad nor CDOT will have any liability to the Contractor for costs or delays associated with such Work stoppage or requirements associated with avoidance or hazardous situations.

6.2.3 Utility Crossings

The Railroad is not responsible for Utilities on Railroad ROW. The Contractor shall locate all Utilities on Railroad ROW within the immediate vicinity of the Work. The Contractor shall certify to the Railroad that all the Utilities on Railroad ROW and within the immediate vicinity of the Work have been identified and properly located.

6.2.4 Design Reviews

The Railroad will review design plans for Work on the Railroad's property. Railroad review is separate and independent from CDOT oversight. The Contractor shall coordinate the required Railroad design reviews with the Railroad. All plans submitted to the Railroad for review and approval shall be in English units. All documents shall be delivered to the Manager of Public

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Projects as identified in section 6.2.2. The Contractor shall allow ~~15 days~~ for review and comment by the Railroad for all ~~design~~ reviews ~~as identified in section 3.5 of Exhibit G to the C&M Agreement – Guidelines for Railroad Grade Separation Projects.~~

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The Contractor shall obtain Railroad Approval in writing of design plans for all of the design elements of the Work on the Railroad's property.

6.2.5 Construction Requirements

The Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to the proper manner of protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals, and other property of the Railroad, its tenants, or licensees, at and in the vicinity of the Work during the period of construction.

All construction Work within the Railroad ROW and/or properties shall be performed during daylight hours unless authorized otherwise by the Railroad.

The Contractor shall coordinate with the Railroad prior to beginning any construction on or adjacent to the Railroad ROW. The Contractor shall schedule and hold a Railroad pre-construction conference. Working windows for demolition and construction shall be coordinated with the Railroad and Railroad flaggers.

The Contractor shall provide written notification to the Railroad at least 30 Days in advance of the date on which the Contractor expects to begin Work on Railroad properties. All notices and correspondence with the Railroad shall contain the Project number and location. Copies of such agreements, notices, and correspondence shall also be submitted to CDOT.

The Contractor shall obtain Railroad agreement in writing, in advance, on methods and procedures covering all Work on the Railroad's property. Upon completion of the Work, the Contractor shall remove from the premises of the Railroad ROW all Equipment, surplus Material, and debris, leaving such premises in a neat condition satisfactory to the Railroad.

If the Contractor employed upon the Railroad's property performs the Work thereon contrary to the Railroad-approved plans, specifications, and requirements of the Contract Documents, or if the Contractor performs the Work on the Railroad's property in a manner deemed hazardous by the Railroad (to its property and facilities or the safe and expeditious movement of its traffic), the Railroad will have the right to stop the Work on the Railroad's property until the acts or omissions of the Contractor have been fully rectified to the satisfaction of the Railroad.

The Contractor shall be responsible to the Railroad and its tenants for all damages for delays that may be sustained by the Railroad, its tenants, their employees, or freight in their care caused by any interference that could have been avoided by proper handling of the Project Work.

All of the limitations and obligations imposed upon the Contractor by this Section shall apply with equal force and effect to any Subcontractor performing any Project Work for the Contractor upon the Railroad's ROW. The Contractor shall be primarily liable and responsible to the Railroad for all acts or omissions of any Subcontractor employed upon the Railroad's ROW.

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Nothing herein contained shall be construed to preclude the Railroad from proceeding against the Contractor and Subcontractors individually or collectively.

The Contractor shall perform its Work in such manner and at such times as shall not to endanger or interfere with the safe operation of the tracks and property of the Railroad and the traffic moving on such tracks, as well as wires, signals, and other property of the Railroad, its tenants or licensees, at or in the vicinity of the Work. The Contractor shall not pile or store any Materials, tools, or park any Equipment, when not in use, closer to the center of nearest railroad track than permitted by the following clearances:

1. 25 feet, 0 inches horizontally from nearest rail
2. 23 feet, ~~3.5~~ 4.0 inches vertically above top of rail

Falsework, forms, bracing or other construction supports, driven piles, etc., shall be no closer to the center of the nearest railroad track than permitted by the following temporary construction clearances:

1. 15 feet, 0 inches horizontally from nearest rail
2. 21 feet, 6 inches vertically above top of rail

An orange temporary fence shall be installed to identify temporary easements and flagging areas.

Any proposed variance of the above clearances shall be submitted by the Contractor to the Railroad, the Public Utilities Commission if applicable, and to CDOT; and the variance shall not be undertaken until approved by the Railroad and until CDOT has obtained any necessary authorization from any governmental body or bodies having jurisdiction. No extra compensation will be allowed in the event the Contractor's Work is delayed pending Railroad approval and Governmental Approval.

If required, temporary crossings at grade of the Railroad's tracks or roadways or unloading pits on the Railroad's ROW will only be constructed by the Railroad. If required, the Contractor shall execute a temporary crossing agreement with the Railroad. The Contractor shall only enter Railroad property through routes approved by the Railroad. The Contractor shall maintain any such crossings so established in good condition at all times; shall keep flange-ways free of ice, snow, dirt, rock and debris; and shall install, operate, maintain and remove in a manner satisfactory to the Railroad suitable barricades adequate to prevent unauthorized vehicles or Equipment from using such crossings or roadways. All costs and expenses for installation, maintenance, and operation of any such crossings or roadways and barricades, whether the Work performed by the Railroad or by the Contractor, shall be included in the Work, notwithstanding anything elsewhere contained herein. The Contractor shall not at any time cross the Railroad's tracks with vehicles or Equipment of any kind or character, except at existing public crossings or at crossings established, as provided for in this paragraph.

The Contractor shall provide positive drainage along the Railroad at all times during and at the end of construction in the area.

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Work shall be performed in accordance with plans and specifications approved by the Railroad and in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and other facilities. The requirements of the Railroad and the instructions of its representatives shall be complied with relating to the proper manner of protecting the tracks, pipelines, wire lines, signals, and all other property at said location; the traffic moving on such tracks; and the removal of tools, Equipment, and Materials.

The Contractor shall not pursue any levies, liens, or encumbrances of any nature whatsoever against Railroad property, and shall promptly remove any lien against Railroad property arising from performance of Work hereunder by the Contractor or any Subcontractor; and if not removed within 20 Days, the Railroad may act to remove same and all the costs shall be paid by the Contractor.

Railroad representatives, conductors, flagmen, or watchmen will be provided by the Railroad to protect its facilities, property, and movements of its trains or engines when, in the opinion of the Railroad's representative, they are necessary because of the Contractor's operations while working on or adjacent to Railroad property or its tracks.

The cost of all personnel deemed necessary by the Railroad and provided by the Railroad for the protection of the Railroad facilities and trains during the period of constructing the Project, and the cost of installing protective devices in the case of impaired clearance, as above specified, shall be borne by the Contractor.

At the request of the Railroad, the Contractor shall remove from the Railroad premises any employee of said Contractor or any Subcontractor who fails to conform to the instructions of the Railroad's representative. All Work on the Railroad premises shall be suspended until such request of the Railroad is met. The Contractor shall indemnify the Railroad against any claim arising from the removal of any such employee from the Railroad premises.

Upon completion of the Work to be performed on Railroad property, the Contractor shall promptly remove from Railroad property all tools, Equipment, and Materials placed thereon by the Contractor or the Contractor's agents. The Contractor shall restore said property to the same state and condition as when the Contractor entered thereon and shall leave said property in a clean and presentable condition satisfactory to the Railroad.

The Contractor shall provide written notice to the Railroad that the Work has been completed within 10 Days following completion and acceptance of such Work. All notices and correspondence with the Railroad shall contain the Project number and location. Copies of such agreements, notices, and correspondence shall also be submitted to CDOT.

6.2.6 Colorado Public Utilities Commission (PUC)

Per PUC Regulations (4 CCR 723-7:7203), only the roadway or railroad authority in highway-rail crossings may petition or apply to the PUC. CDOT will apply for the highway-rail crossing PUC authorizations necessary for the Project. A Draft of the PUC Application is included in the Reference Documents. The Contractor shall support CDOT in these efforts by the following:

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1. The Contractor shall be responsible for preparing all applications to be submitted to the PUC, including developing the application text and all supporting documentation, and preparing exhibits to the satisfaction of CDOT and the PUC.
2. The Contractor shall attend meetings with appropriately qualified staff and cooperate with the PUC, as reasonable and requested by CDOT.
3. The Contractor shall allow 10 Days of review time for CDOT staff to review the submitted applications and supporting documentation prior to CDOT filing the application with the PUC. Any subsequent reviews required by CDOT due to deficiencies in the submitted applications and supporting documentation shall be subject to additional 10-Day review periods.
4. The Contractor shall prepare and coordinate any post application exhibits and/or information requested by the PUC, including providing technical expertise at any PUC legal proceedings, as requested by CDOT.
5. The Contractor shall allow for appropriate PUC approval durations in the Project schedule and shall provide the applications and supporting documentation in a timely fashion to CDOT so as not to impact the Project Schedule. Any delays or increase in costs of the completion of the Project caused by the failure of or delay by the Contractor to provide the PUC applications and supporting documentation to CDOT shall be the responsibility of the Contractor.

6.3 Deliverables

At a minimum, the Contractor shall submit the following for review, Approval, and/or Acceptance:

Deliverable	Review, Acceptance, or Approval	Schedule
Notify Railroad of Project commencement	Railroad	Within 5 Days of NTP1
Contractor / Railroad agreement (Exhibit C and Exhibit C-1)	Executed by the Railroad	Prior to commencing Work on Railroad property
Written notice of intent to commence Work on Railroad ROW	Railroad	30 days prior to beginning work. Per the executed agreement with the Railroad
Written notice of intent to stop Work on Railroad ROW	Railroad	15 days prior to completing all work. Per the executed agreement with the Railroad
Railroad design plans	Approval by the Railroad	45-day Railroad review Per RR review requirements. Submit prior to beginning any construction on Railroad property
PUC application	CDOT	Per the Project Schedule
Exhibit C – Contractor Estimate of Flagging Days	Railroad	Accompany Contractor Submittal of Exhibit C and Exhibit C-1